



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

FIRST SECTION

CASE OF YELIZAROV v. RUSSIA

(Application no. 36551/07)

JUDGMENT

STRASBOURG

26 March 2009

FINAL

26/06/2009

This judgment may be subject to editorial revision.

In the case of Yelizarov v. Russia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Nina Vajić, *President*,

Anatoly Kovler,

Elisabeth Steiner,

Dean Spielmann,

Sverre Erik Jebens,

Giorgio Malinverni,

George Nicolaou, *judges*,

and André Wampach, *Deputy Section Registrar*,

Having deliberated in private on 5 March 2009,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 36551/07) against the Russian Federation lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Russian national, Mr Dmitriy Vladimirovich Yelizarov (“the applicant”), on 18 July 2007.

2. The applicant was represented by Mr D. Agranovskiy, a lawyer practising in the Moscow region. The Russian Government (“the Government”) were initially represented by Ms V. Milinchuk, former Representative of the Russian Federation at the European Court of Human Rights, and subsequently by their Representative, Mr G. Matyushkin.

3. The applicant alleged that his detention pending trial had been unlawful and excessively long

4. On 7 January 2008 the President of the First Section decided to communicate the complaint about the allegedly excessive length of detention to the Government. It was also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3). The President made a decision on priority treatment of the application (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1978 and lives in Moscow.

A. Background information

6. The applicant was a member of a public association, the National Bolshevik Party. On 15 November 2005 the Supreme Court of the Russian Federation ordered its dissolution. On 19 January 2006 the Federal Registration Service of the Ministry of Justice refused an application for registration of a political party by the same name. Party members challenged the refusal before Taganskiy District Court, Moscow.

7. On 13 April 2006 fifteen party members, including the applicant, came to Taganskiy District Court for a hearing concerning the refusal to register the National Bolshevik Party. The applicant alleged that near the court building they had been attacked by a group of forty people and had had to defend themselves. According to the Government, the party members, including the applicant, had assaulted passers-by with gas guns and rubber truncheons.

B. Criminal proceedings against the applicant

8. On 11 April 2007 the applicant was arrested. The arresting officer indicated in his report that witnesses had identified the applicant as one of the perpetrators of the assault. On the same day he was charged with participation in mass disorders involving the use of gas guns and assault and battery, an offence under Article 213 § 2 of the Criminal Code.

9. On 12 April 2007 Tverskoy District Court, Moscow, formally remanded the applicant in custody, finding that he had been charged with a serious criminal offence and that he had no registered place of residence in Moscow or permanent employment. The court concluded that he might abscond, interfere with the proceedings or reoffend.

10. In his grounds of appeal of 13 April 2007 the applicant submitted that he had been arrested a year after the fight. He had had plenty opportunity to abscond, reoffend or interfere with the investigation during that year if he had wished. The fact that he had not fled from justice proved that he had no such intention. He had no criminal record, had permanent residence and employment in Moscow, positive references, a spouse suffering from epilepsy and a child. He was the only breadwinner in his family. He asked to be released on bail.

11. On 7 May 2007 Moscow City Court upheld the detention order on appeal, finding that it had been lawful and justified.

12. On an unspecified date the applicant was committed for trial before Taganskiy District Court.

13. On 22 May 2007 Taganskiy District Court scheduled a preliminary hearing for 29 May 2007 and ordered that the applicant should meanwhile remain in custody. It referred to the gravity of the charge, the applicant's character and his record of administrative offences, which included

commission of several disorderly acts, and concluded that the applicant might abscond or reoffend. The applicant's arguments that he had a child, that his wife suffered from epilepsy and that he himself needed medical assistance were insufficient to warrant release.

14. The applicant appealed, repeating the arguments set out in his grounds of appeal of 13 April 2007. On 11 July 2007 the Moscow City Court upheld the decision, finding that it had been lawful, well-reasoned and justified.

15. On 24 May 2007 a member of Parliament offered his personal guarantee that the applicant would not abscond.

16. On 29 May 2007 Taganskiy District Court returned the case to the investigator, ordering that the applicant's case be joined with the cases of six other members of the National Bolshevik Party who had been charged in connection with the same events of 13 April 2006. It further ordered that the applicant should remain in custody. It referred to the gravity of the charge and his record of administrative offences. The applicant's character and the circumstances surrounding the commission of the imputed offence gave reasons to believe that he might abscond, reoffend or interfere with the proceedings.

17. On the same day the applicant's case was joined with the cases of six other persons, who had allegedly acted in conspiracy with the applicant.

18. On 28 June 2007 Tverskoy District Court extended the applicant's detention until 6 August 2007, referring to the gravity of the charge, his record of administrative offences, the need for a further investigation and the risk of the applicant's absconding or interfering with the investigation. It found that the applicant's arguments about his good character and family situation were not convincing. Counsel for the applicant was absent from the hearing.

19. The applicant appealed, repeating the arguments set out in his grounds of appeal of 13 April 2007. He further complained that his counsel had not been notified about the hearing. On an unspecified date his appeal was dismissed by Moscow City Court.

20. In July 2007 seven defendants, including the applicant, were committed for trial.

21. On 26 July 2007 Taganskiy District Court scheduled a preliminary hearing for 8 August 2007 and ordered that the defendants should meanwhile remain in custody. The court found that the defendants had been charged with a serious offence committed by an organised group some members of which had not yet been identified, and concluded that they might abscond or intimidate the victims and witnesses. It further noted that the defendants' assurances that they had no intention of absconding were unconvincing and held that there was no reason to apply a more lenient preventive measure.

22. On 8 August 2007 Taganskiy District Court held a preliminary hearing and ordered that all defendants should remain in custody for the same reasons as before.

23. On 24 September 2007 Moscow City Court upheld the decisions of 26 July and 8 August 2007 on appeal, finding that they had been lawful and justified.

24. In September 2007 the applicant and his co-defendants lodged applications for release with Taganskiy District Court. On 12 September 2007 Taganskiy District Court rejected their applications. It noted that the defendants' arguments had already been examined and rejected many times when extension orders had been issued. It found that the grounds for the defendants' detention mentioned in the extension orders were still pertinent and it was still necessary to hold them in custody. The defendants had been charged with a serious criminal offence committed by an organised group, some members of which had not yet been identified. Given the gravity of the charges against them, they might abscond, reoffend or interfere with the establishment of the truth if released.

25. On 12 December 2007 Moscow City Court upheld the decision on appeal.

26. On 26 December 2007 Taganskiy District Court extended the defendants' detention until 12 April 2008. It found that the grounds for their detention mentioned in the previous extension orders were still pertinent and a risk remained of their absconding, reoffending or obstructing the justice. The court also noted that the defendants' arguments about the absence of *corpus delicti* in their actions and about the lack of evidence of their involvement in the commission of the imputed offence were without substance because, in extending the defendants' detention, the court could not make any findings as to their guilt or innocence.

27. The applicant appealed, arguing that the District Court's conclusions had been hypothetical. It had issued a collective detention order and had not taken into account the personal circumstances of each defendant. In particular, it had disregarded the applicant's arguments that he had no criminal record, had positive references, a permanent place of residence and employment, and was the only breadwinner for his ailing wife and minor daughter. He had offered to post bail and had provided the District Court with the personal surety of a member of Parliament. He finally submitted that during the year that had passed between the imputed events and his arrest he had not made any attempts to abscond or interfere with the investigation. Therefore, there were no reasons to believe that he would do it at the advanced stage of the proceedings.

28. On 12 March 2008 Moscow City Court upheld the extension order on appeal, finding that it had been lawful and justified, as there had been no reason to release the defendants.

29. On 24 March 2008 Taganskiy District Court convicted the defendants as charged and sentenced the applicant to one year and six months' imprisonment.

II. RELEVANT DOMESTIC LAW

30. Since 1 July 2002 criminal law matters have been governed by the Code of Criminal Procedure of the Russian Federation (Law no. 174-FZ of 18 December 2001).

31. "Preventive measures" or "measures of restraint" (*меры пресечения*) include an undertaking not to leave a town or region, personal surety, bail and detention (Article 98). If necessary, the suspect or accused may be asked to give an undertaking to appear (*обязательство о явке*) (Article 112).

32. When deciding on a preventive measure, the competent authority is required to consider whether there are "sufficient grounds to believe" that the accused would abscond during the investigation or trial, reoffend or obstruct the establishment of the truth (Article 97). It must also take into account the gravity of the charge, information on the accused's character, his or her profession, age, state of health, family status and other circumstances (Article 99).

33. Detention may be ordered by a court if the charge carries a sentence of at least two years' imprisonment, provided that a less restrictive preventive measure cannot be applied (Article 108 § 1).

34. After arrest the suspect is placed in custody "during the investigation". The period of detention during the investigation may be extended beyond six months only if the detainee is charged with a serious or particularly serious criminal offence. No extension beyond eighteen months is possible (Article 109 §§ 1-3). The period of detention "during the investigation" is calculated to the day when the prosecutor sends the case to the trial court (Article 109 § 9).

35. From the date the prosecutor forwards the case to the trial court, the defendant's detention is "before the court" (or "during the trial"). The period of detention "during the trial" is calculated to the date the judgment is given. It may not normally exceed six months, but if the case concerns serious or particularly serious criminal offences, the trial court may approve one or more extensions of no longer than three months each (Article 255 §§ 2 and 3).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 5 OF THE CONVENTION

36. The applicant complained under Article 5 § 1 (c) of the Convention that there had been no grounds to detain him and that the domestic courts had not had due regard to the defence's arguments. Under Article 5 § 3, he complained that his right to trial within a reasonable time had been infringed and alleged that detention orders had not been founded on sufficient reasons. The relevant parts of Article 5 read as follows:

“1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

(c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial ...”

A. Admissibility

37. As regards the applicant's complaint that his detention was unlawful, the Court notes that on 12 April 2007 Tverskoy District Court, Moscow, remanded the applicant in custody because of the gravity of the charges against him. The applicant's detention was subsequently extended on several occasions by the domestic courts.

38. The domestic courts acted within their powers in making those decisions and there is nothing to suggest that they were invalid or unlawful under domestic law. The question whether the reasons for the decisions were sufficient and relevant is analysed below in connection with the issue of compliance with Article 5 § 3 (compare *Khudoyorov v. Russia*, no. 6847/02, §§ 152 and 153, ECHR 2005-... (extracts)).

39. The Court finds that the applicant's detention was compatible with the requirements of Article 5 § 1 of the Convention. It follows that this

complaint must be rejected as manifestly ill-founded pursuant to Article 35 §§ 3 and 4 of the Convention.

40. As regards the applicant's complaint that his right to trial within a reasonable time or to release pending trial had been infringed, the Court finds that it is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

41. The Government submitted that the decisions to remand the applicant in custody had been lawful and justified. The domestic courts had taken into account that the applicant had been charged with a serious criminal offence, had not lived at his registered place of residence in the Rostov region and had no residence registration in Moscow. Therefore, there had been a risk that he might abscond if released. Further, the domestic courts had referred to the danger of reoffending, that danger being gauged by reference to his membership of the National Bolshevik Party. That Party had been recognised as an extremist organisation by a Russian court and had been banned. Its members had resorted to radical and violent action to express their political views and many of them had been convicted or accused of criminal offences. The applicant had been previously fined in administrative proceedings for commission of disorderly acts, which proved that he was likely to reoffend. The domestic courts had also taken into account that the imputed offence had been committed by an organised group. It had been therefore necessary to hold the applicant in custody to prevent his obstructing the establishment of the truth by communication of the details of the investigation to his accomplices. Finally, the Government submitted that the domestic courts had carefully examined the applicant's arguments and had found them insufficient to warrant release. Thus, as the applicant had no permanent income, his argument regarding his having a child had rightly been considered irrelevant by the domestic courts. In the Government's view, the applicant's pre-trial detention had been founded on "relevant and sufficient" reasons.

42. The applicant considered that the domestic courts had not advanced "relevant and sufficient" reasons to hold him in custody. He had not fled from justice during the year that had passed between the fight and his arrest, although he had had plenty of opportunity to do so if he wished. He considered himself the victim rather than the perpetrator of the attack and was interested in cooperating with the investigation to assist them in establishing the truth. He had no criminal record, had a permanent place of residence and permanent employment and was the only breadwinner for his

ailing wife and his daughter. He had offered to post bail and had provided the courts with the personal surety of a member of Parliament. Therefore there had been no risk of his absconding. Nor could he interfere with the investigation, as he had been arrested after the investigation had been completed. He further argued that his membership of the National Bolshevik Party had not given rise to a danger of reoffending. The members of the National Bolshevik Party had never resorted to violence. All criminal proceedings against them had been politically motivated and they had been persecuted for their political views and membership of an opposition organisation, the National Bolshevik Party. The applicant concluded that the domestic courts had extended his detention without demonstrating the existence of specific facts in support of their conclusion that he might abscond, interfere with the investigation or reoffend.

2. *The Court's assessment*

(a) **General principles**

43. The Court reiterates that the persistence of reasonable suspicion that the person arrested has committed an offence is a condition *sine qua non* for the lawfulness of the continued detention. However after a certain lapse of time it no longer suffices. In such cases, the Court must establish whether the other grounds given by the judicial authorities continued to justify the deprivation of liberty. Where such grounds were “relevant” and “sufficient”, the Court must also ascertain whether the competent national authorities displayed “special diligence” in the conduct of the proceedings (see *Labita v. Italy* [GC], no. 26772/95, §§ 152 and 153, ECHR 2000-IV).

44. The presumption is in favour of release. As the Court has consistently held, the second limb of Article 5 § 3 does not give judicial authorities a choice between either bringing an accused to trial within a reasonable time or granting him provisional release pending trial. Until his conviction, the accused must be presumed innocent, and the purpose of the provision under consideration is essentially to require his provisional release once his continued detention ceases to be reasonable. A person charged with an offence must always be released pending trial unless the State can show that there are “relevant and sufficient” reasons to justify the continued detention (see, among other authorities, *Castravet v. Moldova*, no. 23393/05, §§ 30 and 32, 13 March 2007; *McKay v. the United Kingdom* [GC], no. 543/03, § 41, ECHR 2006-...; *Jabłoński v. Poland*, no. 33492/96, § 83, 21 December 2000; and *Neumeister v. Austria*, 27 June 1968, § 4, Series A no. 8). Article 5 § 3 of the Convention cannot be seen as unconditionally authorising detention provided that it lasts no longer than a certain period. Justification for any period of detention, no matter how short, must be convincingly demonstrated by the authorities (see *Shishkov v. Bulgaria*, no. 38822/97, § 66, ECHR 2003-I (extracts)).

45. It is incumbent on the domestic authorities to establish the existence of specific facts relevant to the grounds for continued detention. Shifting the burden of proof to the detained person in such matters is tantamount to overturning the rule of Article 5 of the Convention, a provision which makes detention an exceptional departure from the right to liberty and one that is only permissible in exhaustively enumerated and strictly defined cases (see *Rokhlina v. Russia*, no. 54071/00, § 67, 7 April 2005, and *Ilijkov v. Bulgaria*, no. 33977/96, §§ 84-85, 26 July 2001). The national judicial authorities must examine all the facts arguing for or against the existence of a genuine requirement of public interest justifying, with due regard to the principle of the presumption of innocence, a departure from the rule of respect for individual liberty, and must set them out in their decisions dismissing the applications for release. It is not the Court's task to establish such facts or to take the place of the national authorities who ruled on the applicant's detention. It is essentially on the basis of the reasons given in the domestic courts' decisions and of the true facts mentioned by the applicant in his appeals that the Court is called upon to decide whether or not there has been a violation of Article 5 § 3 of the Convention (see *Korchuganova v. Russia*, no. 75039/01, § 72, 8 June 2006; *Ilijkov*, cited above, § 86; and *Labita*, cited above, § 152).

(b) Application to the present case

46. The applicant was arrested on 11 April 2007. On 24 March 2008 the trial court convicted him as charged. Thus, the period to be taken into consideration lasted slightly less than a year.

47. Although the applicant denied having participated in any criminal activity, the Court notes that witnesses identified him as one of the perpetrators of the assault. It accepts therefore that his detention could have initially been warranted by a reasonable suspicion of his involvement in the commission of a criminal offence. It remains to be ascertained whether the judicial authorities gave "relevant" and "sufficient" grounds to justify the applicant's continued detention and whether they displayed "special diligence" in the conduct of the proceedings.

48. The judicial authorities relied, in addition to the reasonable suspicion against the applicant, on the risk of his absconding, reoffending or obstructing the course of justice. In this respect they referred to the gravity of the charge, the absence of a registered place of residence or permanent employment in Moscow, his record of administrative offences, and the fact that the imputed offence had been committed by an organised group.

49. The gravity of the charge was the main factor in the assessment of the applicant's potential to abscond, reoffend or obstruct the course of justice. The Court has repeatedly held that, although the severity of the sentence faced is a relevant element in the assessment of the risk of an accused absconding or reoffending, the need to continue deprivation of

liberty cannot be assessed from a purely abstract point of view, taking into consideration only the seriousness of the offence. Nor can continuation of the detention be used to anticipate a custodial sentence (see *Letellier v. France*, judgment of 26 June 1991, Series A no. 207, § 51; see also *Panchenko v. Russia*, no. 45100/98, § 102, 8 February 2005; *Goral v. Poland*, no. 38654/97, § 68, 30 October 2003; and *Ilijkov*, cited above, § 81). This is particularly relevant in the Russian legal system where the characterisation in law of the facts – and thus the sentence faced by the applicant – is determined by the prosecution without judicial review of the issue whether the evidence that has been obtained supports a reasonable suspicion that the applicant has committed the alleged offence (see *Govorushko v. Russia*, no. 42940/06, § 48, 25 October 2007). The domestic courts explicitly refused to consider the state of evidence against the applicant or verify the persistence of reasonable suspicion of his involvement in the commission of the imputed offence (see paragraph 26 above).

50. Another ground for the applicant's detention was his record of administrative offences. The Court accepts that that factor was relevant in assessing the danger of reoffending. Such a danger, if convincingly established, may lead the judicial authorities to place and leave a suspect in detention in order to prevent any attempts to commit further offences. It is however necessary, among other conditions, that the danger be a plausible one and the measure appropriate, in the light of the circumstances of the case and in particular the past history and the personality of the person concerned (see *Clooth v. Belgium*, judgment of 12 December 1991, Series A no. 225, § 40). In the cases of *Clooth v. Belgium* and *Kolev v. Bulgaria* (see below) the Court found that the previous criminal record did not justify the applicant's detention because the offences which had given rise to the applicant's previous convictions were non-violent and were not comparable, either in nature or degree of seriousness, to the charges preferred against him in the contested proceedings (see *Clooth*, cited above, § 40, and *Kolev v. Bulgaria*, no. 50326/99, §§ 60-61, 28 April 2005). In the present case the applicant's record included only minor non-violent administrative offences and he had no criminal record. The Court considers that the applicant's record of administrative offences did not justify his continued detention (see, for similar reasoning, *Aleksey Makarov v. Russia*, no. 3223/07, § 51, 12 June 2008).

51. The domestic courts also referred to the fact that the imputed offence had been committed by a group of people acting in criminal conspiracy. The Court observes that the fact that a person is charged with acting in criminal conspiracy is not in itself sufficient to justify long periods of detention; his personal circumstances and behaviour must always be taken into account (see *Aleksey Makarov*, cited above, § 50, and *Popkov v. Russia*, no. 32327/06, § 62, 15 May 2008). There is no indication in the present case

that before his arrest the applicant had made any attempts to intimidate witnesses or to obstruct the course of the proceedings in any other way. In such circumstances the Court has difficulty accepting that there was a risk of interference with the administration of justice at the later stages of the proceedings. Such risk was bound to gradually decrease as the trial proceeded and the witnesses were interviewed (compare *Miskurka v. Poland*, no. 39437/03, § 51, 4 May 2006). The Court is not therefore persuaded that compelling reasons existed for a fear that the applicant would interfere with witnesses or otherwise hamper the investigation of the case, and certainly not such as to outweigh his right to trial within a reasonable time or release pending trial.

52. The only other ground for the applicant's continued detention was the District Court's brief reference to the applicant's "character", as typified by his lack of a permanent place of residence or employment in Moscow. The applicant consistently maintained that he lived and worked in Moscow on a permanent basis. It is not necessary for the Court to determine the applicant's residence and employment situation. Even assuming that he did not have a permanent place of residence in Moscow and was unemployed, the mere lack of a fixed residence or permanent employment does not give rise to a danger of absconding or reoffending (see *Pshevecherskiy v. Russia*, no. 28957/02, § 68, 24 May 2007). In the present case, the domestic courts did not point to any aspects of the applicant's character or behaviour that would justify their conclusion that he presented a persistent risk of absconding, reoffending or interfering with the proceedings. The applicant, on the other hand, constantly invoked the facts mitigating such risks. However, the domestic courts devoted no attention to discussion of the applicant's arguments that he had positive references, was in frail health and was the only breadwinner for his ailing spouse and a child. Nor did they address the fact that the applicant had not fled or interfered with the investigation during the year that had passed between the imputed events and his arrest, although he had had an opportunity to do so.

53. The Court notes the Government's argument that the applicant had been suspected of membership of an extremist organisation and had also been likely to communicate the details of the investigation to his accomplices. However, it is not the Court's task to assume the place of the national authorities who ruled on the applicant's detention and to supply its own analysis of facts arguing for or against detention (see *Nikolov v. Bulgaria*, no. 38884/97, § 74, 30 January 2003, and *Labita*, cited above, § 152). Those circumstances were referred to for the first time in the proceedings before the Court and the domestic courts never mentioned it in their decisions.

54. The Court further observes that after the case had been submitted for trial in July 2007 the trial court used the same summary formula to refuse the requests for release and extend the pre-trial detention of seven persons,

without describing their personal situation in any detail. The Court has already found that the practice of issuing collective detention orders without a case-by-case assessment of the grounds for detention in respect of each detainee was incompatible, in itself, with Article 5 § 3 of the Convention (see *Shcheglyuk v. Russia*, no. 7649/02, § 45, 14 December 2006; *Korchuganova*, cited above, § 76; and *Dolgova v. Russia*, no. 11886/05, § 49, 2 March 2006). By extending the applicant's detention by means of collective detention orders the domestic authorities had no proper regard to his individual circumstances.

55. Finally, the Court notes that when deciding whether a person should be released or detained the authorities have an obligation under Article 5 § 3 to consider alternative measures of ensuring his or her appearance at trial. This Convention provision proclaims not only the right to "trial within a reasonable time or to release pending trial" but also lays down that "release may be conditioned by guarantees to appear for trial" (see *Sulaoja v. Estonia*, no. 55939/00, § 64 *in fine*, 15 February 2005, and *Jabłoński*, cited above, § 83). In the present case the authorities never considered the possibility of ensuring the applicant's attendance by the use of a more lenient preventive measure, although he asked many times to be released on bail and provided the domestic courts with the personal surety of a member of Parliament.

56. The Court has frequently found a violation of Article 5 § 3 of the Convention in Russian cases where the domestic courts extended an applicant's detention relying essentially on the gravity of the charges and using stereotyped formulae without addressing specific facts or considering alternative preventive measures (see *Belevitskiy v. Russia*, no. 72967/01, §§ 99 et seq., 1 March 2007; *Khudobin v. Russia*, no. 59696/00, §§ 103 et seq., ECHR 2006-... (extracts); *Mamedova v. Russia*, cited above, §§ 72 et seq.; *Dolgova v. Russia*, cited above, §§ 38 et seq.; *Khudoyorov v. Russia*, cited above, §§ 172 et seq.; *Rokhlina v. Russia*, cited above, §§ 63 et seq.; *Panchenko v. Russia*, cited above, §§ 91 et seq.; and *Smirnova v. Russia*, nos. 46133/99 and 48183/99, §§ 56 et seq., ECHR 2003-IX (extracts)).

57. Having regard to the above, the Court considers that by failing to address specific facts or consider alternative "preventive measures" and by relying essentially on the gravity of the charges, the authorities extended the applicant's detention on grounds which, although "relevant", cannot be regarded as "sufficient" for the entire period of detention. In these circumstances it would not be necessary to examine whether the proceedings were conducted with "special diligence".

58. There has accordingly been a violation of Article 5 § 3 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

60. The applicant claimed 100,000 euros (EUR) in respect of non-pecuniary damage.

61. The Government submitted that the claim was excessive. In their opinion, the finding of a violation would constitute sufficient just satisfaction.

62. The Court observes that it has found a violation of Article 5 § 3 of the Convention in that the length of the applicant’s detention was not sufficiently justified. It considers that the applicant must have suffered frustration, helplessness and a feeling of injustice as a consequence of the domestic authorities’ decisions to keep him in custody without sufficient reasons. It finds that the applicant suffered non-pecuniary damage which would not be adequately compensated by the finding of a violation. The particular amount claimed is, however, excessive. Making its assessment on an equitable basis, the Court awards the applicant EUR 3,000 under this head, plus any tax that may be chargeable.

B. Costs and expenses

63. The applicant did not claim costs and expenses. Accordingly, there is no call to make an award under this head.

C. Default interest

64. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the excessive length of the applicant's detention admissible and the remainder of the application inadmissible;
2. *Holds* that there has been a violation of Article 5 § 3 of the Convention;
3. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 3,000 (three thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Russian roubles at the rate applicable at the date of settlement;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 26 March 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

André Wampach
Deputy Registrar

Nina Vajić
President